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Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Report of the Secretary-General

Summary

In his previous report on the Khmer Rouge trials (A/71/338), the Secretary-General identified important progress made in the judicial work across all sets of proceedings before the Extraordinary Chambers in the Courts of Cambodia. The Secretary-General also highlighted the continuing financial challenges facing both the international and national components of the Extraordinary Chambers and requested the approval of a subvention of up to $16.2 million for the year 2017.

By its resolution 71/272, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $11 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2017, and requested the Secretary-General to report on the use of the commitment authority in the context of the next report.

In the present report, the Secretary-General outlines the judicial progress of the Extraordinary Chambers since the previous report, provides a projection regarding the anticipated use of the commitment authority for 2017, presents information on the proposed budget of the Chambers for the biennium 2018-2019 and seeks the approval of the Assembly of an appropriation for a subvention for the international component of the Chambers in the amount of $10.4 million for 2018.

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I. Introduction

1. Since their establishment, and as detailed in the previous reports of the Secretary-General on the Khmer Rouge trials (A/58/617, A/59/432 and Add.1, A/60/565, A/62/304, A/67/380, A/68/532, A/69/536, A/70/403 and A/71/338), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress towards fulfilling their mandate. Since the previous report of the Secretary-General, all organs of the Chambers have continued to be fully engaged as trial and judicial investigations are proceeding, while a judgment on appeals in case 002/01 was delivered in the last quarter of 2016.

2. Case 001, against Kaing Guek Eav, alias "Duch", was the first case tried before the Chambers. His conviction became final, as varied, by the appeal decision of the Supreme Court Chamber of 3 February 2012. He was sentenced to life imprisonment.

3. Case 002 has been severed into two trials. The first trial, case 002/01, concentrated on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh and later from other regions and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. The Trial Chamber pronounced its judgment on 7 August 2014, convicting two surviving senior leaders of the Khmer Rouge regime, Nuon Chea and Khieu Samphan, of crimes against humanity and sentencing them to life imprisonment. Both accused appealed the convictions. On 23 November 2016, the Supreme Court Chamber delivered the judgment on appeals, confirming the charges of crimes against humanity of murder, persecution on political grounds and other inhumane acts, and upholding the sentence of life imprisonment imposed on both accused. A second trial, case 002/02, contains additional charges against Nuon Chea and Khieu Samphan related to genocide, forced marriages and treatment of Buddhists, as well as alleged crimes against humanity and war crimes committed at four security centres and three worksites and in a group of work cooperatives located in one administrative district. The trial commenced with opening statements on 17 October 2014. Evidentiary hearings commenced on 8 January 2015 and concluded on 11 January 2017. The Trial Chamber heard closing statements in June 2017 and the trial judgment is anticipated in the second quarter of 2018. On 27 February 2017, the Trial Chamber decided to terminate the proceedings with regard to all facts in the closing order of case 002 that were not included in cases 002/01 or 002/02. Case 002/02 will therefore be the last trial in relation to case 002.

4. In cases 003 and 004, significant progress has been made in the judicial investigations. The cases involve allegations against four charged persons. In case 003, Meas Muth was charged in March 2015, and additional charges were laid against him in December 2015. In case 004, Im Chaem and Ao An were formally charged in March 2015. Additional charges against Ao An, including genocide, were announced in March 2016. Yim Tith, the last suspect in case 004, was charged in December 2015. In case 003, the conclusion of the judicial investigation against Meas Muth was notified to the parties by the international co-investigating judge on 10 January 2017. Case 004 has been severed into three cases, one for each charged person, to guarantee the right of the charged persons to be informed of the decision on the charges brought against them without undue delay. In December 2015, the co-investigating judges notified the parties that they had concluded the judicial investigation against Im Chaem. Subsequently, the charges against her were severed into a new case file 004/01. On 22 February 2017, the co-investigating judges issued a joint dispositive closing order dismissing the case against Im Chaem because she was not subject to the personal jurisdiction of the Extraordinary Chambers. The closing order with full reasoning was issued on 10 July 2017 and the international co-prosecutor has filed a notice of appeal against the dismissal. On 16 December 2016, the co-investigating judges notified the conclusion of the judicial investigation against Ao An in case 004

and ordered the severance of the charges against him into a new case file 004/02. On 19 May 2017, they issued a forwarding order requesting the co-prosecutors to file their final submissions in case 004/02. Case 004 remains the case against Yim Tith. The co-investigating judges notified the parties that they had concluded the judicial investigations against him on 13 June 2017. In cases 003, 004/02 and 004, at the time of the notification of the conclusion of the investigation, the international co-investigating judge utilized internal rule 66 bis, which was adopted by the Court in January 2015, to reduce the scope of the judicial investigations in these cases. Decisions by the co-investigating judges on whether cases 003, 004/02 and 004 will be sent for trial are currently expected to be issued by the first quarter of 2018.

5. Pursuant to the request of the General Assembly in its resolution 68/247 B, the Extraordinary Chambers prepared a completion plan,[1] highlighting a number of remaining procedural milestones and projecting the timelines required for judicial completion of the current caseload. The plan is updated on a quarterly basis. Given that no decision has yet been made as to whether any charged person in case 003, case 004/02 and/or case 004 will be indicted and sent for trial, it is difficult to project an overall timeline for the Court's judicial work. Nevertheless, in accordance with the completion plan, it is projected that any appeal proceedings in case 002/02 would run into the first quarter of 2020. The timelines for any additional trial(s) in cases 003, 004/02 and 004 can be projected only when the closing orders indicting or acquitting the charged persons in those cases are issued, on the basis of the number of cases going forward for trial, the number of accused and the scope and complexity of the charges against the accused.

6. The Extraordinary Chambers continue to face considerable financial challenges. It has proved difficult to attract the requisite voluntary funding to fully cover the costs of the international component in 2017. The authorization by the General Assembly of a subvention to supplement the voluntary financial resources of the international component has been essential for the work of the Court, in particular in enabling the continued operations of the Chambers during the first half of 2017. The anticipated level of voluntary contributions to the international component will require the use of about $11.0 million of the commitment authority by the end of 2017. The financial contributions from the Government of Cambodia, coupled with pledges from the international community, have stabilized the overall funding situation with respect to the national component. However, a shortfall in the amount of $536,700 remains for 2017. Given the structure of the Court, if the operation of either the national or the international component is jeopardized, the overall work of the Court is severely impeded.

II. Progress made in the case files

A. Case 001: Kaing Guek Eav, alias "Duch"

7. Kaing Guek Eav continues to serve the remainder of his life sentence at Kandal provincial prison, Cambodia.

B. Case 002: Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith

8. On 15 September 2010, the co-investigating judges of the Extraordinary Chambers issued a closing order indicting the former Chair of the Democratic

[1] Extraordinary Chambers in the Courts of Cambodia, completion plan, revision 13, 30 June 2017. Available from www.eccc.gov.kh/en/about-eccc/finances.

Kampuchea People's National Assembly and Deputy Secretary of the Communist Party of Kampuchea, Nuon Chea, the former Deputy Prime Minister for Foreign Affairs of Democratic Kampuchea, Ieng Sary, the former Head of State of Democratic Kampuchea, Khieu Samphan, and the former Minister of Social Affairs of Democratic Kampuchea, Ieng Thirith, for crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts and genocide against the Cham and Vietnamese ethnic groups. Ieng Thirith had been found unfit to stand trial on medical grounds and remained under judicial supervision until her death in August 2015 and the subsequent termination of the proceedings. The proceedings against Ieng Sary were also terminated upon his death in March 2013.

9. The charges in case 002 have been severed into two separate cases, styled as cases 002/01 and 002/02, each with a separate trial and judgment. Case 002/01 focused on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh (phase one) and later from the regions (phase two) and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. It also considered the structure of Democratic Kampuchea, the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea and the roles of the accused in relation to the policies of the Democratic Kampuchea regime relevant to all charges. Case 002/02 encompasses charges relating to genocide, forced marriage and rape, internal purges, treatment of Buddhists and targeting of former Khmer Republic officials, in addition to alleged crimes against humanity and war crimes committed at four security centres (including S-21), three worksites and a number of adjacent work cooperatives. By order of the Supreme Court Chamber of 29 July 2014, further charges not encompassed in the two cases were provisionally stayed pending appropriate disposal by the Trial Chamber. On 27 February 2017, the Trial Chamber issued a decision terminating the proceedings with regard to all facts set out in the case 002 closing order that were not included in either case 002/01 or case 002/02. Consequently, case 002 will be completed upon the final adjudication of case 002/02.

10. On 7 August 2014, the Trial Chamber delivered its judgment in the historic proceedings in case 002/01. It found that Nuon Chea and Khieu Samphan had, through their participation in a joint criminal enterprise, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the first phase of the movement of the population, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the second phase of the movement of the population and murder and extermination through executions of Khmer Republic officials at Tuol Po Chrey. They were also found to have planned, instigated, aided and abetted the aforementioned crimes during the movement of the population (phases one and two) and at Tuol Po Chrey. In addition, Nuon Chea was found to have ordered the crimes and to have been responsible as a superior for all crimes committed in the course of the movement of the population and at Tuol Po Chrey. The Trial Chamber sentenced both Nuon Chea and Khieu Samphan to life imprisonment.

11. In late 2014, appeals were filed against the trial judgment by the co-prosecutors, as well as by both Nuon Chea and Khieu Samphan, who advanced a total of 223 and 148 grounds of appeal, respectively. On 23 November 2016, the Supreme Court Chamber rendered its judgment on appeals. The Supreme Court Chamber upheld the convictions for the crimes against humanity of murder, persecution on political grounds and other inhumane acts in relation to the evacuation of Phnom Penh immediately after the fall of the city on 17 April 1975 and reversed the conviction for the crime against humanity of extermination in connection with that event. Regarding

the second phase of the population transfers that occurred between 1975 and 1977, the Chamber affirmed the convictions of both accused for the crime against humanity of other inhumane acts, entered a conviction for the crime against humanity of murder and reversed the convictions for the crimes against humanity of extermination and persecution on political grounds. While the Supreme Court Chamber confirmed that at least 250 soldiers and officials of the Khmer Republic had been executed at Tuol Po Chrey in April 1975 and crimes against humanity were likely to have occurred, the evidence was considered to be inadequate to substantiate a finding that there had been a policy to kill all Khmer Republic soldiers. As a result, the Chamber reversed the convictions for the crimes against humanity of extermination, murder and persecution on political grounds at Tuol Po Chrey. The Supreme Court Chamber considered that the imposition of a life sentence upon both Nuon Chea and Khieu Samphan was appropriate and therefore confirmed the sentence imposed by the Trial Chamber. The Supreme Court Chamber also found inadmissible the appeal by the co-prosecutors seeking declaratory relief on the applicability of the most extended form of joint criminal enterprise before the Extraordinary Chambers.

12. The trial in case 002/02 opened on 17 October 2014, with presentation of evidentiary hearings commencing on 8 January 2015. On 11 January 2017, the Trial Chamber concluded the evidentiary hearings, after hearing evidence on the topics of the Tram Kok cooperatives (including the Kraing Ta Chan Security Centre and the treatment of Buddhists), the 1 January Dam worksite, the Kampong Chhnang Airport construction site, the Trapeang Thma Dam worksite, the treatment of the Cham and the Vietnamese, the Au Kanseng, Phnom Kraol and S-21 security centres and internal purges, the regulation of marriage, the nature of the armed conflict and the roles of the accused. The Chamber sat for 274 hearing days during which it heard the testimony of 114 witnesses, 63 civil parties and 8 experts. The Chamber heard the parties' closing statements between 13 and 23 June 2017. The Trial Chamber has commenced its deliberations and the trial judgment is expected in the second quarter of 2018.

C. Cases 003 and 004

13. On 7 September 2009, the international co-prosecutor filed two introductory submissions (subsequently supplemented by further submissions) with the co-investigating judges alleging the commission of further crimes falling under the jurisdiction of the Extraordinary Chambers by five additional suspects. The crimes under investigation are genocide, crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts and violations of the 1956 Penal Code of Cambodia. Of the five suspects, four have been charged. One suspect in case 003 died in 2014. Since the commencement of judicial investigations in these two cases, 269 field missions and 1,411 witness interviews have been completed. During the period 1 July 2016 to 30 June 2017, 34 field missions and 141 witness interviews were conducted.

14. Pursuant to submissions filed by the international co-prosecutor, the co-investigating judges are seized of 10 crime scenarios in case 003 and 55 crime scenarios in case 004. Under the internal rules, the co-investigating judges are legally obligated to investigate all crime scenarios of which they have been seized, although they have the authority, at the time of notification of the conclusion of a judicial investigation, to reduce the scope of a case, as long as its remaining facts are representative of the scope of the introductory submission and any supplementary submissions.

15. On 3 March 2015, the then international co-investigating judge charged Meas Muth and Im Chaem in absentia in cases 003 and 004, respectively. Meas Muth was

charged with alleged crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia, while Im Chaem was charged with alleged crimes against humanity and violations of the 1956 Penal Code of Cambodia. Charging was undertaken in absentia, as the charged persons had ignored formal summonses and ensuing arrest warrants had not been executed. On 27 March 2015, the then international co-investigating judge charged Ao An in person in case 004 with alleged crimes against humanity and violations of the 1956 Penal Code of Cambodia. Following the charging, the charged persons have full access to the case file and can participate in the judicial investigations through their co-lawyers. On 2 June 2015, the co-investigating judges issued a decision dismissing the criminal allegations against Sou Met, until then a suspect in case 003, on account of his death in 2014. On 9 December 2015, the last remaining suspect in case 004, Yim Tith, appeared before the international co-investigating judge. He was charged with genocide, crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia. On 14 December 2015, Meas Muth appeared voluntarily before the international co-investigating judge, where he was notified of additional charges, including genocide. A number of charges from the previous decision to charge him in absentia were rescinded, as was the outstanding arrest warrant.

16. On 18 December 2015, the national and international co-investigating judges notified the parties that they considered the judicial investigations against Im Chaem concluded. Noting that Im Chaem has the right to determination of the charges brought against her without undue delay, on 5 February 2016, the co-investigating judges ordered the severance of the proceedings against Im Chaem from case 004 and into a new case file, 004/01. On 14 March 2016, the international co-investigating judge expanded the charges against Ao An to include additional crimes against humanity and genocide. On 16 December 2016, the co-investigating judges notified all parties in cases 004 and 004/01 that they considered the judicial investigation against Ao An to be concluded and ordered the severance of the proceedings from case 004 and the creation of a new case file, 004/02, because the charged person has the right to be informed of the decision on the charges brought against him without undue delay. The international co-investigating judge also issued a separate decision reducing the scope of the investigation pursuant to internal rule 66 bis, constituting the first application of this rule since its adoption in January 2015.

17. On 10 January 2017, the international co-investigating judge notified all parties in case 003 that he considered the judicial investigation against Meas Muth in case 003 to be concluded and issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. The national co-investigating judge reiterated that he had issued a notice of conclusion of the investigation in case 003 on 29 April 2011, followed by a forwarding order on 7 February 2013. On 22 February 2017, the co-investigating judges issued a joint dispositive closing order in the proceedings against Im Chaem in case 004/01. They dismissed the case because, according to their evaluation of the evidence collected during the investigation, Im Chaem is not subject to the personal jurisdiction of the Extraordinary Chambers as she was neither a senior leader nor otherwise one of the most responsible officials of the Khmer Rouge regime. On 19 May 2017, the co-investigating judges issued a forwarding order requesting the co-prosecutors to file their final submission in case 004/02 against Ao An. On 13 June 2017, the co-investigating judges notified all parties in cases 004, 004/01 and 004/02 that they considered the judicial investigation against Yim Tith in case 004 to be concluded. The international co-investigating judge issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. On 10 July 2017, the co-investigating judges issued the closing order with full reasoning dismissing case 004/01 against Im Chaem. The international co-prosecutor filed a notice of appeal against this closing order with the Office of the

Co-Investigating Judges on 20 July 2017. On 9 August 2017 the Office of the Co-Prosecutors filed its appeal against the closing order with the Pre-Trial Chamber.

18. On 8 May 2017, the co-investigating judges released a statement informing the public that they had issued a confidential request for submissions to the parties in cases 003, 004 and 004/02 and to the Office of Administration of the Extraordinary Chambers, in which they had expressed their deep concerns about the funding situation of the Chambers and what it might mean for the future of the cases. The co-investigating judges later informed the public that they had received the submissions and were considering the arguments of the parties and of the Office of Administration regarding the request for submissions on a stay of proceedings and that a decision by the co-investigating judges was no longer expected before 30 June 2017. On 11 August 2017, the co-investigating judges issued their decision. The judges deferred the decision on a stay for the time being, but indicated that they would remain actively seized of the matter until the last closing order had been issued and would take the measures necessary to address the situation should a future lack of funds or financial uncertainty threaten judicial independence, fairness and the integrity of the proceedings. In addition, the judges invited the Office of Administration to report, on at least a quarterly basis, on the status of funding vis-à-vis the approved budget.[2]

19. The current projection in case 004/01 is that a decision on appeals against the closing order by the Pre-Trial Chamber is expected to be issued by the fourth quarter of 2017. The projection in cases 003, 004 and 004/02 is that the closing orders containing either a dismissal or an indictment will be issued by the first quarter of 2018. Decisions on any potential appeals against the closing orders by the Pre-Trial Chamber are projected to be issued by the third quarter of 2018.

III. Completion plan and road map: projected timelines

20. Pursuant to the request of the General Assembly for a completion strategy with a clear road map, the Extraordinary Chambers prepared a completion plan that details the remaining work to be completed in the proceedings of which they are currently seized. It is clarified that the current proceedings represent the entire caseload of the Extraordinary Chambers, as confirmed by the international co-prosecutor. Assessing each case individually, the plan sets out a road map in which the remaining procedural milestones are highlighted and the timelines required for the judicial completion of the current caseload are projected. The plan was first prepared in March 2014 and subsequently revised on a quarterly basis to reflect the most accurate perspective as the proceedings evolved. It also sets out a series of measures that may assist in its expeditious completion.

21. On the basis of current projections, the earliest anticipated completion of judicial proceedings in case 002 will be in the second quarter of 2018, with the delivery of a trial judgment in case 002/02, absent any appeal. The timing of the final conclusion of judicial proceedings in case 002/02 will depend on the filing of any appeal. The current projections estimate that notices of appeals and appeals against the trial judgment, if any, will be filed in the third quarter of 2018, with the judgment on these potential appeals delivered in the first quarter of 2020, bringing case 002 to a close.

22. The phases of judicial investigation are projected to conclude in 2017 for case 004/01 and in 2018 for cases 003, 004/02 and 004. In case 004/01, one milestone is

[2] A public version of the decision is available from www.eccc.gov.kh/en/document/court/combined-decision-impact-budgetary-situation-cases-003-004-and-0042-and-related-submi.

expected in 2017, namely, a decision of the Pre-Trial Chamber in the case against Im Chaem to either confirm the dismissal or to send the case to trial. The following milestones are projected to be reached in 2018 in respect of cases 003, 004/02 and 004: (a) the issuance of closing orders in the cases against Meas Muth, Ao An and Yim Tith, with a decision of the co-investigating judges to send the case to trial, in whole or in part, or to dismiss the proceedings; and (b) the disposal by the Pre-Trial Chamber of any appeals against the closing orders in the cases relating to Meas Muth, Ao An and Yim Tith, with a decision of the Pre-Trial Chamber to either confirm or amend the closing order, or to dismiss the case. Should any or all of those cases be sent for trial, in whole or in part, projections for trial timelines would then need to be assessed, taking into account the number of cases going forward for trial, the number of accused and the scope and complexity of the charges against the accused.

IV. Current financial position and fundraising efforts

23. Previous reports of the Secretary-General have highlighted to Member States the financial challenges faced by the Extraordinary Chambers, which have persisted in 2016 and 2017. In previous years, the impacts of these challenges have included recruitment freezes and the uncertainty of staff working on month-to-month contracts, with the potential for distraction from the discharge of core functions. National component staff had gone without contracts and salaries for prolonged periods, resulting, inter alia, in a walkout by 100 staff in September 2013. Given the structure of the Extraordinary Chambers wherein national component and international component staff work side by side, the overall work of the Court was severely impeded by this action.

24. Pursuant to the Agreement between the United Nations and the Royal Government of Cambodia, the United Nations is responsible for defraying the costs of supporting the international component of the Extraordinary Chambers, while the Government of Cambodia is responsible for defraying the costs of the national component, including salaries of national personnel, utilities and service expenses of the Chambers. In its resolution 71/272, the General Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Extraordinary Chambers, and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions, including by broadening the donor base, for funding the future activities of the Chambers.

25. **International component**. Historically, funding for the international component of the Extraordinary Chambers has been raised from a limited number of Governments each year, many of which participate in the principal donors group. In 2008, the Secretary-General designated a Special Expert on the United Nations Assistance to the Khmer Rouge Trials to assist in fundraising for the Extraordinary Chambers. Past fundraising activities, including two pledging conferences (in 2010 and 2013), a written appeal from the Secretary-General to all Member States, bilateral requests by senior United Nations officials to donor countries and a written appeal from the then chair of the principal donors group to permanent missions of Member States in New York in 2015, were unsuccessful in generating significant new sources of funding.

26. **National component**. In the first years of operation, the national component was funded largely by voluntary contributions covering 80 per cent of the budget, with the remainder paid by the Government of Cambodia, which also provides in-kind contributions of buildings, facilities and local services. The contribution of the Government has increased significantly over the years and, since 2015, has covered over 60 per cent of the national component's requirements. In response to

the serious financial constraints on the national component, intensive efforts have been undertaken by the Extraordinary Chambers, together with senior officials of the Government of Cambodia and the Special Expert, as well as Cambodian ambassadors in foreign capitals, to jointly seek support from key Governments for the national component. As a result of those efforts, sufficient funds were raised for the national component in 2016 and 2017.

27. **Fundraising efforts in 2017**. The principal donors group, working closely with the Special Expert and Secretariat officials, continued to pursue the financial strategy developed in 2016 to broaden the donor base and to maintain the support of traditional donors. The principal donors group sent fundraising letters to a number of potential donors. The Special Expert travelled to Brussels in early January 2017 to brief the Asia-Oceania Working Party of the Council of the European Union and seek significant support from the European Union, which was secured by mid-2017. During the first half of 2017, the Special Expert continued to engage in intensive consultations with the principal donors group, a large number of missions to the United Nations and the entire diplomatic membership of the Friends of the Extraordinary Chambers in the Courts of Cambodia during consultations in Phnom Penh, as well as with the Government of Cambodia, to fund the international and national components through 2017 and secure multi-year pledges into 2018 and 2019. As a result of the strategy, sufficient contributions have been pledged to secure, with the additional assistance of the subvention from the regular budget, the operation of both the international and national components of the Chambers until the end of the year. The Secretariat has continued to pursue fundraising efforts through follow-up communications with diplomatic missions on a regular basis.

28. Despite the combined efforts of the principal donors group, the Secretariat and the Special Expert, voluntary contributions for the international component continued to decline, falling from $17.6 million in 2015 to $13.1 million in 2016 and dropping to about $10.7 million in pledges and contributions for 2017. In view of indications from the current donors, the level of voluntary contributions is expected to decline further, to about $8.5 million in 2018. The estimated income for 2018 includes $1.3 million in confirmed pledges and $7.2 million in anticipated contributions from members of the principal donors group and other traditional donors.

Current financial position and use of the commitment authority

29. The General Assembly approved a commitment authority of $15.54 million for the international component of the Extraordinary Chambers for 2014; these funds, however, were never drawn upon as voluntary funding eventually covered in full the international component's obligations during 2014. The Assembly again approved commitment authorities for the international component amounting to $12.1 million for 2015, $12.1 million for 2016 and $11.0 million for 2017, thus ensuring that the salaries and expenses of personnel could be paid on time and avoiding any disruption to the work of the Chambers.

30. By the end of 2016, $10.4 million in expenditures had been incurred against the amount of $10.9 million actually appropriated. The unused amount of $0.5 million of the regular budget funds provided to the Extraordinary Chambers in 2016 will be returned to the United Nations.

31. The commitment authority has functioned as a bridging financing mechanism, permitting the United Nations to extend the contracts for international officials and staff at the Extraordinary Chambers, and as a source of funds should voluntary funding fall short. Taking into account the availability of voluntary contributions and the commitment authority, the United Nations extended staff contracts in four steps in 2017: by a one-month, a five-month and two three-month periods.

32. The group of interested States approved a revised budget for 2017 amounting to $23.76 million for the international component and $6.37 million for the national component. As at 30 June 2017, voluntary contributions of $2.34 million had been received for the international component for 2017, which, together with the drawdown of an amount of $9.97 million from the commitment authority, covered the expenditures for the first six months of 2017. To meet the operational cash flow requirements of the international component in the latter six months of 2017, a further drawdown on the commitment authority and additional voluntary contributions of $8.35 million are expected. For the national component, as at 30 June 2017, voluntary contributions and pledges of $5.84 million had been received for 2017. The shortfall of $536,700 had not been secured at the time of writing the present report.

33. Taking into account that the confirmed and anticipated pledges, contributions and subvention from the regular budget are insufficient to meet the budgetary requirements, cost-saving measures have been put in place to achieve cost avoidance of at least $2 million for the international component during the year 2017, through the freezing of recruitment against vacant posts unless hiring is absolutely necessary; cost avoidance and curtailing measures in areas such as travel, operating expenses and contractual services; and the discontinuation of contracts of standby counsel, which are no longer required based on the assessment of the Trial Chamber. It should be noted that, although the above measures will yield some savings, thus ensuring that the available funding is adequate to conduct essential judicial operations, the lack of full funding for the 2017 budget has had an impact on staff morale and has contributed to staff turnover.

V. Funding requirements of the Extraordinary Chambers for 2018-2019

34. The international component and the national component are funded separately, with the Secretariat being responsible for the receipt and management of voluntary funds for the international component and the Government of Cambodia being responsible for funding the national component, including through contributions from the international community for this purpose. The proposed budget for the biennium 2018-2019 defines all of the resources for both components, including staff resources, required to operate the Extraordinary Chambers efficiently throughout the biennium. The resource requirements of the international component of the Chambers for 2018-2019 are summarized in tables 1 and 2.

Table 1
Financial resources for the international component of the Extraordinary Chambers

(Thousands of United States dollars)

Component	*2016 expenditure*	*2017 revised budget*	*Resource requirements for 2018-2019*		
			2018	*2019*	*Total*
A. Judicial offices	8 267.5	8 331.1	6 039.4	3 166.3	9 205.7
B. Defence and Victims Support Sections	4 620.6	4 662.2	3 529.8	1 503.3	5 033.1
C. Office of Administration	10 660.8	10 769.7	8 066.0	5 999.7	14 065.7
D. Provision for cases 003 and 004	–	–	1 297.3	5 352.9	6 650.2
Total	**23 548.9**	**23 763.0**	**18 932.5**	**16 022.2**	**34 954.7**

Table 2
Post resources for the international component of the Extraordinary Chambers

Category	*2016*	*2017[a]*	*2018*	*2019*
Professional and above				
Judges (D-2)	12	12	12	5
D-1	1	1	1	1
P-5	7	7	6	4
P-4	18	15	12	10
P-3	38	37	30	11
P-2	6	9	4	–
Subtotal	**82**	**81**	**65**	**31**
Other levels				
Field Service	23	20	13	11
National Professional Officer	10	11	11	11
General Service	45	46	42	32
Subtotal	**78**	**77**	**66**	**54**
Total	**160**	**158**	**131**	**85**

[a] Number of posts in the 2017 revised budget, as approved by the group of interested States.

35. The proposed budget for the biennium 2018-2019 has been prepared in line with the completion plan of the Extraordinary Chambers. The most recent revision of the completion plan contains projected timelines through to the final adjudication of case 002 and through to the issuance of final closing orders on whether to send cases 003 and 004 to trial or to dismiss them. As noted in paragraph 22 above, the closing orders are currently expected by the first quarter of 2018, with decisions on potential appeals against the closing orders projected for the third quarter of 2018. In consultation with the members of the principal donor group, resource requirements for any potential trial in cases 003 and 004 have been budgeted separately, as outlined in table 1 above.

36. In 2018, resource requirements in the amount of $18.93 million would provide for the continuation of 131 posts (12 D-2, 1 D-1, 6 P-5, 12 P-4, 30 P-3, 4 P-2, 13 Field Service, 11 National Professional Officer, 42 General Service), representing a reduction of 27 posts, and for non-post items such as non-staff compensation, consultants and experts, travel of staff, travel of witnesses, contractual services, general operating expenses, supplies and furniture and equipment. In 2019, resource requirements in the amount of $16.02 million would provide for 85 positions (5 D-2, 1 D-1, 4 P-5, 10 P-4, 11 P-3, 11 Field Service, 11 National Professional Officer and 32 General Service) and for non-post operational items.

37. For 2018-2019, the total funding requirements for both the national and international components are estimated at $46.12 million ($34.96 million for the international component and $11.16 million for the national component). On the international side, at the time of writing the present report, the Secretariat had received pledges in the amount of $1.3 million, with anticipated pledges amounting to $7.2 million for 2018 based on indications from the traditional donors. Based on the pattern of contributions in the period 2016-2017, it is expected that resources will be pledged incrementally and in varied amounts, with insufficient fund balances available at any given time to ensure staff contracts of a reasonable

duration. The operational reserve of $4.2 million that had accumulated since the Chambers' inception was fully depleted in 2012 to meet staff payroll costs and remains at zero. With continuing shortfalls in voluntary contributions, the Secretariat has been unable to reinstate any reserve, and thus has no funding mechanism to address unforeseen operational contingencies.

38. To address the above-mentioned situation, the Secretary-General is proposing a subvention of $10.4 million for the international component for the year 2018. The level of the requested subvention takes into account the 2018 portion of the proposed budget for the biennium 2018-2019, the estimated voluntary contributions of $8.5 million in 2018 and the fact that the financial situation of the Extraordinary Chambers has not improved. The level of the requested subvention reflects the financial resources necessary to secure the operation of the Chambers during 2018, with the assumption that the proposed budget for 2018-2019 would be approved by the group of interested States. Should the proposed budget be approved at a different level, updated information on any adjustments to the budget or the consequent adjustment to the proposed level of subvention will be provided to the General Assembly. The proposed subvention will allow the Chambers to remain operational, pending the receipt of the additional voluntary contributions necessary for operations throughout the year. The Secretary-General proposes that the subvention be available to be drawn upon, should the extrabudgetary funds on hand be insufficient to meet the international component's salary and operational costs. Cognizant of the difficulties of securing funds through voluntary contributions and the need to ensure the expeditious completion of the remaining cases, the Secretary-General will continue his intensive fundraising efforts. While the Advisory Committee on Administrative and Budgetary Questions was of the view that the decision to appropriate an amount for the international component for 2017 would undermine the voluntary nature of the current funding arrangements and related fundraising efforts (A/71/550, para. 28), in view of the financial situation of the Chambers, the Secretary-General is proposing a subvention to be appropriated in order to avoid a negative impact on the cash flow of the Organization. Intensive fundraising efforts will be continued, given the voluntary nature of the funding arrangement, and any unused portion of the subvention that the General Assembly may approve will be returned.

39. Despite the improvement in the situation of the national component in recent years, the timing of contributions remains an important factor and the overall funding remains uncertain for 2018 and beyond. The current estimated requirements for the national component for 2018-2019 amount to $11.16 million, representing $5.79 million for 2018 and $5.37 million for 2019. While the Government of Cambodia is responsible under the Agreement with the United Nations to raise funding for the entire national component, the provision by the Government of Cambodia of $4.1 million in 2015, $4.15 million in 2016 and the same amount in 2017 represents a significant increase compared with previous years. The Government has reiterated its strong commitment to the work of the Extraordinary Chambers and to addressing its funding challenges. The United Nations will also continue to support the Government in seeking to obtain additional voluntary contributions from the international community for the national component. As has been seen in previous years, any funding shortfall on either side is likely to seriously affect the activities of the Chambers as a whole.

VI. Conclusions

40. **The Secretary-General welcomes the important progress made by the Extraordinary Chambers across all sets of current proceedings in the year since the last report. In this context, and bearing in mind the essential mandate**

of the Chambers, the Secretary-General notes the continuing importance of conducting all judicial proceedings before the Chambers in a manner that conforms with the terms of the Agreement establishing the Chambers.

41. Following the judgments in cases 001 and 002/01, substantial progress has been made during 2017 in the landmark trial in case 002/02. Evidentiary hearings were completed, the parties' closing statements were heard and the Trial Chamber has commenced deliberations. The judgment on appeals of the Supreme Court Chamber in case 002/01 was delivered in November 2016, thereby bringing that case to a close. Judicial investigations in cases 003 and 004 have reached key milestones with the dismissal by the co-investigating judges of the case against Im Chaem in case 004/01 and the conclusion of the investigation in cases 003, 004/02 and 004.

42. The Secretary-General commends the judicial officials and staff of the two components of the Extraordinary Chambers for their sustained commitment and dedication in fulfilling the challenging but essential mandate of the Chambers.

43. The Secretary-General welcomes the provision of the majority of the budget of the national component by the Government of Cambodia in 2015, 2016 and 2017 and acknowledges the commitment to the success of the Extraordinary Chambers shown by the Government. At the same time, the Secretary-General is concerned that the Chambers face persisting financial challenges and that the situation has worsened in this regard over the past three years. It remains clear that the current funding mechanisms of the Chambers are not sustainable without additional assistance over the long term.

44. It remains critical for the international community to ensure that the Extraordinary Chambers have the necessary financial means to ensure full accountability, within the scope of their mandate, for the crimes perpetrated during the former Khmer Rouge regime. A financial failure of the Chambers would constitute a renewed tragedy in the quest for justice of the people of Cambodia, who have waited four decades for these efforts to reach belated fruition, and would constitute a serious setback to the international community's fight against impunity.

VII. Recommendations

45. The Secretary-General requests the General Assembly:

(a) To take note of the present report and the use of the commitment authority approved for 2017;

(b) To take note of the resource requirements of the Extraordinary Chambers for the period 1 January to 31 December 2018, estimated at $18,932,500 for the international component of the Chambers to continue to fulfil its judicial mandate;

(c) To appropriate an amount of $10,418,800 by way of subvention for 2018 for the international component of the Extraordinary Chambers under the proposed programme budget for the biennium 2018-2019.

Annex

Financial status of the Extraordinary Chambers in the Courts of Cambodia

A. International component: United Nations Assistance to the Khmer Rouge Trials

Table A.1
Financial status of the international component as at 31 December 2016
(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2016	198 474.4
Interest earned from 2005 to 2016 and other adjustments	4 712.5
Subtotal	**203 186.9**
B. Expenditure[a]	(224 273.0)
Fund balance (shortfall)[b]	**(21 086.1)**

[a] Includes a grant of $3,255,000 in 2013 and loans of $780,000 in 2014 to the national component to cover salary costs. These costs are also reflected in the national component tables.
[b] The shortfall was covered by the regular budget subvention for 2015 ($10,678,400) and 2016 ($10,407,700).

Table A.2
Financial status of the international component for 2017 and projection for 2018
(Thousands of United States dollars)

A. Income for 2017	
Contributions received for 2017	2 338.6
Outstanding pledges for 2017[a]	8 350.1
Anticipated pledges for 2017	–
Subtotal	**10 688.7**
B. Revised budget for 2017	**(23 763.0)**
C. Estimated shortfall for 2017	**(13 074.3)**
D. Income for 2018	
Outstanding pledges for 2018[b]	1 328.7
Anticipated pledges for 2018	7 185.0
Subtotal	**8 513.7**
E. Estimated requirements for 2018[c]	**(18 932.5)**
F. Estimated shortfall for 2018	**(10 418.8)**

[a] Australia ($A 3,250,000 revalued as at 30 June 2017), European Union (€2,000,000 revalued as at 30 June 2017), Finland (€100,000 revalued as at 30 June 2017), Japan (US$ 1,221,818), Norway (NKr 4,000,000 revalued as at 30 June 2017) and United Kingdom (£225,000 revalued as at 30 June 2017).
[b] Sweden (SKr 7,000,000 revalued as at 30 June 2017) and Germany (€450,000 revalued as at 30 June 2017).
[c] 2018 budget figures are subject to change pending review and approval of the proposed budget by the group of interested States.

Indicative resource requirements for the United Nations Assistance to the Khmer Rouge Trials

Table A.3.1
Requirements by component and funding availability, international component
(Thousands of United States dollars)

Component	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)[a]*
A. Judicial offices	8 267.5	8 331.1	6 039.4	3 166.3	9 205.7
B. Defence and Victims Support Sections	4 620.6	4 662.2	3 529.8	1 503.3	5 033.1
C. Office of Administration	10 660.8	10 769.7	8 066.0	5 999.7	14 065.7
D. Provision for cases 003 and 004	–	–	1 297.3	5 352.9	6 650.2
Total expenditure	**23 548.9**	**23 763.0**	**18 932.5**	**16 022.2**	**34 954.7**
Balance brought forward	–	–	–	–	–
Pledges and contributions	13 141.2	10 688.7	8 513.7	–	8 513.7
Total income	**13 141.2**	**10 688.7**	**8 513.7**	**–**	**8 513.7**
Surplus/(shortfall)	**(10 407.7)**	**(13 074.3)**	**(10 418.8)**	**(16 022.2)**	**(26 441.0)**

[a] 2018-2019 budget figures are subject to change pending review and approval of the proposed budget by the group of interested States.

Table A.3.2
Requirements by object of expenditure and funding availability, international component
(Thousands of United States dollars)

Object of expenditure	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)[a]*
Posts	14 126.7	14 576.4	9 850.2	7 229.5	17 079.7
Non-staff compensation	2 003.8	2 402.1	2 472.0	2 003.0	4 475.0
Other staff costs	100.4	–	956.8	3 473.5	4 430.3
Consultants and experts	5 497.6	4 717.0	3 995.3	2 138.0	6 133.3
Travel of staff	80.8	53.1	60.7	60.6	121.3
Travel of witnesses	48.3	64.5	54.1	56.4	110.5
Contractual services	802.0	1 054.9	866.3	485.8	1 352.1
General operating expenses	343.0	495.4	283.1	283.8	566.9
Supplies	203.2	189.2	140.2	144.2	284.4
Furniture and equipment	343.1	210.4	253.8	147.4	401.2
Total expenditure	**23 548.9**	**23 763.0**	**18 932.5**	**16 022.2**	**34 954.7**
Balance brought forward	–	–	–	–	–
Pledges and contributions	13 141.2	10 688.7	8 513.7	–	8 513.7
Total income	**13 141.2**	**10 688.7**	**8 513.7**	**–**	**8 513.7**
Surplus/(shortfall)	**(10 407.7)**	**(13 074.3)**	**(10 418.8)**	**(16 022.2)**	**(26 441.0)**

[a] 2018-2019 budget figures are subject to change pending review and approval of the proposed budget by the group of interested States.

B. National component: Cambodia

Table A.4
Financial status of the national component as at 31 December 2016
(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2016	68 729.0
B. Expenditure	(68 690.3)
Fund balance	**38.7**

Table A.5
Financial status of the national component for 2017 and the projection for 2018
(Thousands of United States dollars)

A. Income for 2017	
Cash balance brought forward as at 1 January 2017	38.7
Contributions received for 2017	4 209.4
Outstanding pledges for 2017[a]	1 587.0
Anticipated pledges for 2017	–
Subtotal	**5 835.1**
B. Revised budget for 2017	**(6 371.8)**
C. Estimated shortfall for 2017	**(536.7)**
D. Income for 2018	
Outstanding pledges for 2018	–
Anticipated pledges for 2018	–
Subtotal	**–**
E. Estimated requirements for 2018	**5 790.1**
F. Estimated shortfall for 2018	**(5 790.1)**

[a] €1,500,000 from the European Union (inclusive of programme support costs).

Indicative resource requirements for the national component

Table A.6.1
Requirements by component and funding availability
(Thousands of United States dollars)

Component	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)*
A. Judicial offices	1 725.4	1 590.3	1 183.1	663.1	1 846.2
B. Defence and Victims Support Sections	459.8	476.1	327.9	346.9	674.8
C. Office of Administration	4 366.1	4 305.4	4 096.2	3 930.6	8 026.8

Component	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)*
D. Provision for cases 003 and 004	–	–	182.9	433.7	616.6
Total expenditure	**6 551.3**	**6 371.8**	**5 790.1**	**5 374.3**	**11 164.4**
Balance brought forward	85.0	38.7	–	–	–
Pledges and contributions	6 505.0	5 796.4	–	–	–
Total income	**6 590.0**	**5 835.1**	**–**	**–**	**–**
Surplus/(shortfall)	**38.7**	**(536.7)**	**(5 790.1)**	**(5 374.3)**	**(11 164.4)**

Table A.6.2
Post requirements

Category	*2016*	*2017*	*2018*	*2019*
Professional and above				
D-1 (judges and Director of Administration)	15	15	15	6
P-5	1	1	1	1
NPO-D	22	22	20	17
NPO-C	17	16	16	10
NPO-B/NPO-A	19	19	17	13
Subtotal	74	73	69	47
Other levels				
General Service	111	110	91	83
Subtotal	**111**	**110**	**91**	**83**
Total	**185**	**183**	**160**	**130**

Abbreviation: NPO, National Professional Officer (A, B, C and D reflect levels within the category).

Table A.6.3
Requirements by object of expenditure and funding availability

Object of expenditure	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)*
Posts	3 253.8	3 489.2	2 927.8	2 605.4	5 533.2
Non-staff compensation	902.1	749.8	760.3	608.9	1 369.2
Other staff costs	314.7	269.2	271.2	321.3	592.5
Consultants and experts	141.7	143.5	107.2	141.8	249.0
Travel of staff	48.8	49.3	19.6	21.6	41.2
Contractual services	1 313.6	986.5	1 083.1	1 121.5	2 204.6
General operating expenses	442.3	482.6	444.9	423.0	867.9
Hospitality	26.6	29.4	27.2	27.2	54.4
Premises alternation	52.6	101.1	95.7	56.5	152.2

Object of expenditure	*1 January-31 December 2016 (actual)*	*1 January-31 December 2017 (revised budget)*	*1 January-31 December 2018 (proposed budget)*	*1 January-31 December 2019 (proposed budget)*	*2018-2019 (proposed budget)*
Training and meetings	55.1	71.2	53.1	47.1	100.2
Total	**6 551.3**	**6 371.8**	**5 790.1**	**5 374.3**	**11 164.4**
Balance brought forward	85.0	38.7	–	–	–
Pledges and contributions	6 505.0	5 796.4	–	–	–
Total income	**6 590.0**	**5 835.1**	**–**	**–**	**–**
Surplus/(shortfall)	**38.7**	**(536.7)**	**(5 790.1)**	**(5 374.3)**	**(11 164.4)**